

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

TCA MANAGEMENT CO.; TELESERVICE  
CORPORATION OF AMERICA; and TCA  
CABLE OF AMARILLO, INC.

Complainants,

v.

SOUTHWESTERN PUBLIC SERVICE  
COMPANY,

Respondent.

TO: The Common Carrier Bureau

COMPLAINT

1. Complainants TCA Management Co., and its affiliates, Teleservice Corporation of America and TCA Cable of Amarillo, Inc., own and operate the cable television systems presently serving Amarillo, Canyon, Dalhart, Farwell, Lake Tanglewood, Plainview, and Texico, Texas. The address address of Complainant is 3015 SSE Loop 323, P. O. Box 130489, Tyler, Texas 75713-0489.

2. Respondent Southwestern Public Service Company is engaged in the provision of electric service in portions of the State of Texas, Respondent's general office address is P. O. Box 1261, Amarillo, Texas 79170.

CC 95-84

DOCKET FILE COPY ORIGINAL

File No. 90-002

RECEIVED  
JUN 15 1995  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Jurisdiction

3. This Commission has jurisdiction over this Complaint and over Respondent under the provisions of the Communications Act of 1934, as amended, including, but not limited to, Section 224, thereof.

4. Respondent owns or controls utility poles in Texas. Such poles are used for purposes of wire communications. Complainants allege, upon information and belief, that Respondent is not owned by any railroad, any person who is cooperatively organized, or any person owned by the federal government or any state.

5. Complainants allege, upon information and belief, and in reliance upon lists published by the Commission, that neither the State of Texas, nor any of its political subdivisions, agencies, or instrumentalities, regulates the rates, terms, or conditions of pole attachments in the manner required by Section 224.

6. Attached hereto is a certificate of service on the Respondent and each federal, state and local agency which regulates any aspect of service provided by Respondents.

Agreement

7. Complainants have entered into respective agreements with Respondent whereby it has agreed that space would be made available on Respondent's poles in the communities served by Complainants for pole attachments as defined in 47 C.F.R. §

1.1402(b). See Exhibit B. According to the most recent pole invoice, there are 22,619 poles billed under the Agreement.

Unjust and Unreasonable Rate

8. Respondent is currently charging Complainant an annual rental of up to \$4.18 per pole.

9. As set forth in Exhibit A, the maximum lawful annual rate which Respondent may charge is the product of its investment per pole, times its annual carrying charge, times the use ratio of 1/13.5. Accordingly, the maximum just and reasonable rate permissible under 47 C.F.R. § 224(b)(1) is \$2.09. Any rate charged by Respondent in excess thereof is unjust and unreasonable, and therefore unlawful.

Settlement Efforts

10. Complainants, through their attorney, have attempted to negotiate a reduction in the current rate. The differences between Complainants and Respondent do not appear susceptible to informal settlement.

Relief Requested

11. Complainant respectfully request that:

a. The Commission determine that the maximum rate Respondent may lawfully charge is \$2.09.

b. The present rate, being in excess thereof, be terminated pursuant to 47 C.F.R. § 1.1410(a);

c. The Commission, pursuant to 47 C.F.R. § 1.1410(b), substitute an annual rate of \$2.09 per pole in the

Agreement; and

d. Respondent be ordered, pursuant to 47 C.F.R. § 1.1410(c), to refund to Complainants the amounts Complainants have paid or, prior to a final resolution of this Complaint will pay, to Respondent in excess of the maximum lawful rate for the period from the date hereof, plus interest.

Respectfully submitted,

TCA MANAGEMENT CO.  
TELESERVICE CORPORATION OF AMERICA  
TCA CABLE OF AMARILLO, INC.

By   
Paul Glist

COLE, RAYWID & BRAVERMAN  
1919 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
(202) 659-9750

Their Attorney

Dated: October 15, 1990

A F F I D A V I T

STATE OF TEXAS                    )  
                                      ) ss:  
COUNTY OF Smith                )

I, Martha S. Hensley, Vice President of TCA Management Co., on oath do state that I have read the foregoing Complaint attached hereto; that I am familiar with the matters contained therein and know the purpose thereof; and that the facts set forth therein are true and correct to the best of my knowledge, information and belief.

Martha S. Hensley  
MARTHA S. HENSLEY

Subscribed and sworn to before me  
this 11<sup>th</sup> day of October 1990.

Karen L. Schlattner  
Notary Public KAREN L. SCHLATTNER

My Commission Expires: 3/21/93

EXHIBIT A

Investment

$$\frac{.85 (77,944,347 - 26,034,183 - 8,420,352)}{394,962} = 93.59$$

Maintenance

$$\frac{3,364,304}{77,944,347 - 26,034,183 - 8,420,352} = 3.49\%$$

$$\frac{68,017,827 - 22,718,627 - 7,347,987}{26,900,328 - 8,984,976 - 2,906,051}$$

Depreciation

$$2.846\% \times \frac{77,944,347}{(79,944,347 - 26,034,183 - 8,420,352)} = 5.10\%$$

Administration

$$\frac{35,960,497}{1,947,101,352 - 567,979,550 - 210,345,983} = 3.08\%$$

Taxes

$$\frac{80,613,965}{1,947,101,352 - 567,979,550 - 210,345,983} = 6.90\%$$

ROR

11.70%

Maximum Rate

$$\begin{array}{r} 93.59 \\ \times 30.27\% \\ \hline 1/13.5 \\ \hline \$ 2.09 \end{array}$$

EXHIBIT B



# TCA

# MANAGEMENT COMPANY

NOV 17 1986

November 12, 1986

*Don Reed*  
Southwestern Public Service Company  
Attn: Administrative Department  
P. O. Box 1261  
Amarillo, TX 79170

Re: License Agreement for Pole Attachments  
with Total Television of Amarillo

Gentlemen:

Total Television of Amarillo ("Seller") has entered into a Sale and Purchase Agreement (the "Agreement") with TCA Cable of Amarillo, Inc., a Texas Corporation ("Buyer"). Pursuant to the terms of the Agreement, Buyer will purchase all of the assets of the cable television system operated by Seller in Amarillo, Texas. This sale will include the above-referenced agreement, which must be assigned, effective at the closing, to Buyer. The closing is scheduled for December 1, 1986.

Pursuant to the terms of the Agreement, the Buyer will be bound by and will assume and discharge, in accordance with its terms, all obligations under the above-referenced agreement from and after the closing.

We respectfully request that you provide your consent to the assignment of the above-referenced agreement by signing where indicated below and returning the original of this letter to me prior to November 25, 1986.

Please call me at 214-595-3701 if you have any questions or need additional information. We appreciate your cooperation.

Sincerely,

*Martha S. Hensley*

Martha S. Hensley  
Vice President-Administration

CONSENTED AND AGREED TO:

SOUTHWESTERN PUBLIC SERVICE COMPANY

By: *Harold O. Reed*

Date: *Nov 21, 1986*

## Attachment 1

AMENDMENT TO  
LICENSING AGREEMENT  
between  
SOUTHWESTERN PUBLIC SERVICE COMPANY  
and  
TOTAL TV OF AMARILLO, INC.

WHEREAS, Parties have entered into a Licensing Agreement, the Execution Date of which is \_\_\_\_\_.

WHEREAS, in a Memorandum Opinion and Order adopted on June 25, 1985, in a cause styled File No. PA-85-0005, before the Federal Communications Commission, In the Matter of Capital Cities Cable, Inc. vs. Southwestern Public Service Company, the Federal Communications Commission established an annual rate per pole attachment of \$2.51;

WHEREAS Southwestern Public Service Company has filed an Application for Review before the Federal Communications Commission and intends to pursue its legal rights before the Federal Communications Commission and, if necessary, into the Federal Court System;

WHEREAS, by Public Notice dated October 21, 1985, the Federal Communications Commission has determined that it will hold in abeyance all pending pole attachment matters until further notice;

WHEREAS, the Parties hereto are desirous of proceeding with the conducting of their business under the Licensing Agreement executed on the Execution Date;

NOW, THEREFORE, the Parties hereto agree that, as of January 1, 1986, the Licensee will pay to SPS an annual rate per pole attachment of \$2.51 for 11,714 pole attachments, said payments and the conduct of the Parties otherwise to be in accordance with the terms of the Licensing Agreement;

FURTHERMORE, if and when the Federal Communications Commission or a court should establish, by Agreed Order or Final Judgment which is not appealable or not appealed, In the Matter of Capital Cities Cable, Inc. vs. Southwestern Public Service Company, an annual rate per pole attachment in excess of \$2.51, then in that event, within thirty days of SPS. having given notice of same to Licensee, Licensee will pay (for 11,714 pole attachments) one-half (1/2) of the difference between the \$2.51 per pole attachment referred to hereinabove and the lesser of the rate per pole attachment established by the Federal Communications Commission or a court and the \$3.56 per pole attachment as reflected in Section 4.2 and as adjusted by Section 4.3 of the Licensing Agreement;

FURTHERMORE, the difference referred to in the preceding paragraph will be paid for each semi-annual payment made for the period of time from January 1, 1986 through and including the date on which Licensee made its last semi-annual payment to SPS prior to receiving the notice of the higher rate referred to hereinabove; provided however, the total amount paid in accordance with the preceding paragraph shall not exceed \$4,000.00, regardless of the amount of time that transpires between January 1, 1986, and the establishing of the higher rate referred to hereinabove;

FURTHERMORE, commencing January 1, 1986, for each attachment in excess of the 11,714 pole attachments referred to hereinabove, Licensee will pay to SPS an annual rate per pole attachment of \$3.56 in accordance with the terms of the Licensing Agreement and subject to adjustment in accordance with Section 4.3 of the Licensing Agreement;

FURTHERMORE, the next semi-annual payment which comes due under the Licensing Agreement and which follows the notice referred to hereinabove will be applicable to all pole attachments and will be based upon the lesser of the ultimate rate established by the Federal Communications Commission or the court and the semi-annual rate per pole attachment as determined by Section 4.2 and as adjusted in accordance with Section 4.3 of the Licensing Agreement.

SOUTHWESTERN PUBLIC SERVICE COMPANY

2-21-86  
Date

By: W. J. Smith

Its Vice President

TOTAL TV OF AMARILLO, INC.  
Licensee

2-26-86  
Date

By: Deady L. L. Ladd

Its General Manager

LICENSING AGREEMENT

between

SOUTHWESTERN PUBLIC SERVICE COMPANY

and

TOTAL TELEVISION OF AMARILLO

LICENSING AGREEMENT  
between  
SOUTHWESTERN PUBLIC SERVICE COMPANY  
and  
TOTAL TELEVISION OF AMARILLO

The parties ("Parties") to this agreement ("Agreement"), dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ ("Execution Date"), are SOUTHWESTERN PUBLIC SERVICE COMPANY, a New Mexico corporation, authorized to transact business in Texas, Oklahoma and Kansas ("SPS") and TOTAL TELEVISION OF AMARILLO ("Licensee").

RECITALS

SPS is a public utility engaged in the business of generation, transmission and distribution of electric energy. In connection with the transmission and distribution of electric energy, SPS utilizes utility poles to support its transmission and distribution lines ("SPS Poles").

Licensee owns and operates a community antenna television system. Licensee desires to attach cable and other equipment owned by Licensee and utilized for the distribution of cable signals to its customers to certain SPS Poles.

ACCORDINGLY, in consideration of the benefits to be realized by the Parties as a result of this Agreement, the specific consideration set forth in this Agreement, and the mutual promises of the Parties contained in this Agreement, the Parties agree that the following terms and conditions shall govern Licensee's use of SPS Poles located within the area shown on the Exhibit A, in or near the city of AMARILLO, County of POTTER, State of TEXAS:

ARTICLE I. GENERAL USE AGREEMENT.

Section 1.1. Prior Use and Future Use. Licensee's use of SPS Poles to which Licensee has equipment attached on Execution Date shall, subsequent to Execution Date, be governed by this Agreement, although a new application for use of these SPS Poles need not be filed with SPS by Licensee. For all further pole attachments or alteration of any existing or future pole attachments to SPS Poles, Licensee must file an application with SPS in the form of Exhibit B ("Application") and receive written permission from SPS prior to alteration of existing attachments or making new attachments.

Section 1.2. Equipment. Licensee's use of SPS Poles shall be confined to supporting cables and other equipment ("Equipment") (i) attached to SPS Poles pursuant to prior agreements between the Parties or (ii) concerning which Licensee has received prior written permission from SPS to attach, pursuant to this Agreement. Licensee's Equipment on SPS Poles shall be used only for the purpose of distribution and dissemination of broadband telecommunications services.

Section 1.3. Other Use. Licensee acknowledges that this Agreement is subject to the rights of any parties (other than Licensee) to prior agreements relating to use of SPS Poles. Licensee shall construct, maintain and operate Equipment on SPS Poles so as not to interfere or conflict with the use of SPS Poles by SPS and others using SPS Poles.

Section 1.4. Damage. Licensee shall notify SPS of any damage to SPS Poles or any SPS equipment, as soon as possible after discovery of the damage. If the damage was caused by Licensee, Licensee shall reimburse SPS for expenses incurred by SPS in making repairs.

Section 1.5. Safety Regulations. Licensee shall, at Licensee's sole expense, construct, maintain and operate its Equipment in conformity with all laws, regulations, orders, and decrees of all lawfully constituted public authorities pertaining to pole line construction, the National Electric Safety Code as it may be revised and supplemented from time to time, and all applicable SPS rules, regulations and policies. Exhibit C depicts typical construction specifications which will be required by SPS.

Section 1.6. Removal. Licensee may at any time remove Licensee's Equipment from SPS Poles after ten (10) days written notice to SPS in the form of Exhibit D. Such removal shall terminate Licensee's right to use any SPS Poles from which Licensee's Equipment is removed.

Section 1.7. Permits, Easements and Licenses. It shall be Licensee's sole responsibility to obtain all permits, easements and licenses necessary for the lawful exercise of the rights granted Licensee by this Agreement.

Section 1.8. Taxes and Fees. Licensee shall report, pay and discharge when due all license and permit fees, assessments, sales, use, property and gross receipts taxes arising out of the use by Licensee of SPS Poles or the exercise by Licensee of its rights granted by this Agreement, and all other taxes, fees and governmental charges similar or dissimilar to the foregoing (excluding

those federal income taxes attributable to the receipt of rental by SPS), together with any penalties or interest thereon, imposed by any state, federal, or local government or any agency or department thereof, upon the Equipment, the use of the Equipment, or the payment to SPS of rental for the right to place the Equipment on SPS Poles.

## ARTICLE II. INSURANCE, INDEMNITY, AND LIABILITY.

Section 2.1. Insurance. During the Term, Licensee shall maintain comprehensive general liability insurance with limits of \$100,000.00 each person, and \$300,000.00 each occurrence. This comprehensive general insurance coverage shall include coverage for any liability assumed by Licensee under the provisions of Section 2.2. Written evidence of compliance with the requirements of this Section 2.1 shall be furnished to SPS on Execution Date and prior to the expiration of each insurance policy year after Execution Date.

Section 2.2. Indemnity. Licensee shall indemnify and hold harmless SPS against and from all claims, demands, causes of action, damages, costs or liability at law or in equity, of every kind and nature whatsoever, directly or indirectly caused by:

(a) the construction, erection, placement, operation, maintenance, replacement, removal, or use of Licensee's Equipment on SPS Poles, or

(b) any occurrence occasioned, or claimed to have been occasioned, by any action of SPS causing any interruption, discontinuance or interference with Licensee's service to any of its subscribers or interference with Licensee's Equipment. Licensee shall pay any judgment or decree which may be rendered against SPS, its successors or assigns, in any such suit, action or other legal proceeding and shall reimburse SPS for all legal expense incurred in connection with these legal proceedings.

Section 2.3. Liability Continues. Termination of this Agreement, in whole or in part, shall not release Licensee from liability under this Agreement, which arises out of any claim that may be accruing or may have accrued at the time of termination or partial termination of this Agreement.

## ARTICLE III. RIGHTS OF SPS.

Section 3.1. Removal or Rearrangement. SPS may require Licensee, upon thirty (30) days notice to Licensee, to remove or rearrange Licensee's Equipment on SPS Poles at Licensee's expense

if, in SPS's judgment, the Equipment interferes with SPS operations or SPS's use of SPS Poles or SPS equipment.

Section 3.2. Reservation of Right. SPS reserves the right to maintain SPS Poles and operate its facilities in a manner that will best enable it to fulfill its own service requirements. If SPS determines that a particular pole or poles are no longer necessary for service to SPS customers, upon thirty (30) days notice to Licensee, SPS may remove that pole or poles without any liability to Licensee for this removal.

#### ARTICLE IV. PAYMENT.

Section 4.1. Payment. Rent payable under this Agreement shall be payable semi-annually in advance on or before the first legal business day in January and on or before the first legal business day in July each year during the Term. Rental payments shall be based upon the number of attachments by Licensee to SPS Poles as determined by SPS on the first day of June and the first day of December, respectively, of each year of the Term. Notice of amounts due SPS on each payment date shall be supplied to Licensee at least ten (10) days prior to the due date of each such payment. Rental, for periods at the beginning and end of the Term which do not correspond with the semi-annual payment periods, shall be prorated for the number of days in such periods.

Section 4.2. Rate. Licensee shall pay SPS for attachments made to SPS Poles, semi-annual rental equal to "X" ("Base Rate") in the following formula times the number of poles used by Licensee as determined according to Section 4.1.

$$X = \frac{(0.5) (A) (B)}{(C)}$$

Where: X = the semi-annual rate per pole attachment;  
A = \$3.40;  
B = SPS's investment in "Distribution Plant" (SPS's Account No. 364 - Poles, Towers and Fixtures) as reported to the Federal Energy Regulatory Commission ("FERC") on SPS's FERC Form 1 filed on December 31 of the year preceeding Execution Date; and  
C = \$61,018,633.00

As of Execution Date, the semi-annual rate per pole attachment ("X" as defined above) is equal to \$1.78, thereby making the annual rate per pole attachment \$3.56. "X" is subject to adjustment in accordance with Section 4.3.



Section 4.3. Adjustments. On the second anniversary of Execution Date and on the same date every two years thereafter, the Base Rate determined in Section 4.2 will be adjusted so that the semi-annual rental to be paid to SPS for the two years following adjustment shall be equal to "D" in the following formula times the number of attachments by Licensee to SPS Poles as determined according to Section 4.1.

$$D = \frac{(0.5) (A) (B)}{(C)}$$

Where: D = The semi-annual rate per pole attachment adjustment;  
A = \$3.40;  
B = SPS's investment in "Distribution Plant" (SPS's Account No. 364 - Poles, Towers and Fixtures) as reported to the FERC on SPS's FERC Form 1 most recently submitted to the FERC as of the date of adjustment; and  
C = \$61,018.633.00

Section 4.4. Alternate. In the event the numbers necessary to calculate the adjustments pursuant to Section 4.3. are unavailable, adjustments to the Base Rate shall be computed using any other method agreeable to the Parties.

Section 4.5. Late Charge. In the event that the rental is not paid on the due dates specified in Section 4.1, a late charge of fifteen percent (15%) of the total due will be added to the rental payment and, if not paid within thirty (30) days of the due date, this Agreement will be deemed terminated pursuant to provisions of Section 6.1.

#### ARTICLE V. TERM.

Section 5.1. This Agreement shall begin on Execution Date and continue in effect until terminated pursuant to the terms and conditions of this Agreement. At the expiration of four (4) years and six (6) months after Execution Date, either Party may terminate this Agreement for any reason by giving six (6) months notice to the other Party. When terminated, Licensee shall remove its Equipment from SPS Poles within sixty (60) days from the date of such termination. During the period of removal, Licensee shall continue to make rental payments according to Article IV until all Equipment has been removed.

## ARTICLE VI. DEFAULT.

Section 6.1. Default. If Licensee should fail to comply with any of the terms and conditions of this Agreement, and this failure shall continue for thirty (30) days after receipt of written notice of this failure, SPS may by written notice to Licensee, terminate this Agreement and Licensee shall remove its Equipment from the SPS Poles to which termination applies within sixty (60) days of notification.

Section 6.2. SPS May Do Work. SPS may elect to remove Licensee's Equipment or do any other work required because of Licensee's default under this Agreement, at Licensee's sole risk and expense, and Licensee, on demand, will reimburse SPS for the entire expense incurred. Except for gross negligence, SPS shall not be responsible for damage to Licensee's Equipment.

## ARTICLE VII. MISCELLANEOUS.

Section 7.1. Previous Agreements. This Agreement supersedes any previous agreements between SPS and Licensee relating to the use of SPS Poles in the area covered by this Agreement except that Licensee shall not be relieved of any responsibility for payments due SPS under previous agreements for use of SPS Poles prior to Execution Date nor any liability for acts or omissions of Licensee, part or all of which took place prior to Execution Date.

Section 7.2. License Only. The right of Licensee to use SPS Poles, granted by this Agreement, shall not create any ownership or property right in Licensee. Licensee's rights are in the nature of a license only.

Section 7.3. Assignment. This Agreement may not be assigned by Licensee without prior written consent of SPS. Any attempted assignment without written consent shall be void.

Section 7.4. Attorney Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret any of the provisions of this Agreement, the prevailing Party shall be entitled to recover its costs of suit and reasonable attorney's fees, which (a) shall be payable only in the event such action is prosecuted to final judgment, (b) may be set by the Court in the trial of such action or may be enforced in a separate action for that purpose, and (c) shall be in addition to any other relief which may be awarded.

Section 7.5. Failure to Enforce Not Waiver. Failure on the part of SPS to enforce any provision of this Agreement shall not be

construed as a general waiver or relinquishment on its part of any provision of this Agreement.

Section 7.6. Notice. Except as otherwise specifically provided in this Agreement, any notice to be given by either Party shall be in writing and shall be sufficient if personally delivered or sent certified mail, return receipt requested, postage prepaid, to the following addresses.

For SP5:                      Southwestern Public Service Company  
                                 P. O. Box 1261  
                                 Amarillo, Texas 79170

                                 Attention: ADMINISTRATIVE Department

For Licensee: \_\_\_\_\_  
                                 \_\_\_\_\_  
                                 \_\_\_\_\_

                                 Attention: \_\_\_\_\_

Any notice shall be deemed delivered on the date mailed in the manner set out above. The designation or address of the Party to be notified may be changed at any time by delivery of notice of that change to the other Party.

Section 7.7. Severability. If any of the terms or provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, in any respect, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 7.8. References. All references in this Agreement to a given Article, Section, or Exhibit refer to an Article, Section, or Exhibit of or to this Agreement.

Section 7.9. Captions. The captions preceding the text of each Article and Section of this Agreement are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

Section 7.10. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the matters covered by this Agreement. No other agreement, statement, or promise made by any Party, or to any employee, officer, or agent of any Party, which is not contained in this Agreement shall be binding or valid.

Section 7.11. Successors and Assigns. Subject to the provisions of Section 7.3, this Agreement shall be binding upon, and shall inure to the benefit of, the heirs, successors, assigns and legal representatives of the Parties.

SOUTHWESTERN PUBLIC SERVICE COMPANY

By: W. J. Smith  
Title: Vice President

LICENSEE

By: Dwight R. Borch  
Title: General Manager

ATTEST:

Larry N. Grier

LICENSE AGREEMENT FOR POLE ATTACHMENTS  
AND/OR CONDUIT OCCUPANCY IN THE San Antonio Area

DATED March 1, 1981,

BETWEEN

Southwestern Bell Telephone Company  
(LICENSOR)

AND

Total Television of Amarillo  
(LICENSEE)

SA 061  
LICENSE AGREEMENT NUMBER

EXHIBIT B

### CONSENT TO ASSIGNMENT OF LICENSING AGREEMENT

On August 29, 1989, SOUTHWESTERN PUBLIC SERVICE COMPANY, a New Mexico corporation ("SPS") and Cablevision of Canyon, a ("Licensee") entered into a Licensing Agreement (the "Licensing Agreement") relating to the use by Licensee of certain property of SPS for the purpose of providing cable television service to residents of Canyon.

**Section 7.3 of the Licensing Agreement provides:**

"Assignment. This Agreement may not be assigned by Licensee without prior written consent of SPS. Any attempted assignment without written consent shall be void."

Lessee has informed SPS that it desires to transfer its cable television business relating to the Licensing Agreement to TCA Management Co. \_\_\_\_\_, a \_\_\_\_\_ ("Assignee"), and in this regard, Lessee has requested SPS to consent (according to Section 7.3 of the Licensing Agreement) to the assignment of the Licensing Agreement by Licensee to Assignee.

ACCORDINGLY, in consideration of the benefits to be realized by SPS, the receipt and sufficiency of which is acknowledged, SPS consents to the assignment of the Licensing Agreement by Licensee to Assignee; however, this consent in no way relieves Licensee of any obligation it may have under the Licensing Agreement.

Failure of Assignee to (1) specifically assume all obligations of Licensee under the Licensing Agreement in the written assignment (the "Assignment") of same to Assignee, or (2) to provide SPS with a copy of the executed Assignment within 30 days of its execution will make this Consent voidable, at the option of SPS.

Signed on 9/14/89

SOUTHWESTERN PUBLIC SERVICE COMPANY

By: David M. Walker  
Its: USA President

GOA/ERF - 0509.049 - 6/17/87 (GENERIC CONSENT/LICEN AGMT/SPS)

**LICENSING AGREEMENT**  
**between**  
**SOUTHWESTERN PUBLIC SERVICE COMPANY**  
**and**  
**CABLEVISION OF CANYON, INC.**

The parties ("Parties") to this agreement ("Agreement"), dated this 1st day of July, 19 86 ("Execution Date"), are SOUTHWESTERN PUBLIC SERVICE COMPANY, a New Mexico corporation, authorized to transact business in Texas, Oklahoma and Kansas ("SPS") and CABLEVISION OF CANYON, INC., a Texas Corporation ("Licensee").

**RECITALS**

SPS is a public utility engaged in the business of generation, transmission and distribution of electric energy. In connection with the transmission and distribution of electric energy, SPS utilizes utility poles to support its transmission and distribution lines ("SPS Poles").

Licensee owns and operates a community antenna television system. Licensee desires to attach cable and other equipment owned by Licensee and utilized for the distribution of cable signals to its customers to certain SPS Poles.

ACCORDINGLY, in consideration of the benefits to be realized by the Parties as a result of this Agreement, the specific consideration set forth in this Agreement, and the mutual promises of the Parties contained in this Agreement, the Parties agree that the following terms and conditions shall govern Licensee's use of SPS Poles located within the area shown on the Exhibit A, in or near the city of CANYON, County of RANDALL, State of TEXAS:

**Article 1. GENERAL USE AGREEMENT.**

**Section 1.1. Prior Use and Future Use.** Licensee's use of SPS Poles to which Licensee has equipment attached on Execution Date shall, subsequent to Execution Date, be governed by this Agreement, although a new application for use of these SPS Poles need not be filed with SPS by Licensee. For all further pole attachments or alteration of any existing or future pole attachments to SPS Poles, Licensee must file an application with SPS in the form of Exhibit B ("Application") and receive written permission from SPS prior to alteration of existing attachments or making new attachments.

**Section 1.2. Equipment.** Licensee's use of SPS Poles shall be confined to supporting cables and other equipment ("Equipment") (i) attached to SPS Poles pursuant to prior agreements between the Parties or (ii) concerning which Licensee has received prior written permission from SPS to attach, pursuant to this Agreement. Licensee's Equipment on SPS Poles shall be used only for the purpose of distribution and dissemination of broadband telecommunications services.

**Section 1.3. Other Use.** Licensee acknowledges that this Agreement is subject to the rights of any parties (other than Licensee) to prior agreements relating to use of SPS Poles. Licensee shall construct, maintain and operate Equipment on SPS Poles so as not to interfere or conflict with the use of SPS Poles by SPS and others using SPS Poles.

**Section 1.4. Damage.** Licensee shall notify SPS of any damage to SPS Poles or any SPS equipment, as soon as possible after discovery of the damage. If the damage was caused by Licensee, Licensee shall reimburse SPS for expenses incurred by SPS in making repairs.

**Section 1.5. Safety Regulations.** Licensee shall, at Licensee's sole expense, construct, maintain and operate its Equipment in conformity with all laws, regulations, orders and decrees of all lawfully constituted public authorities pertaining to pole line construction, the National Electric Safety Code as it may be revised and supplemented from time to time, and all applicable SPS rules, regulations and policies. Exhibit C depicts typical construction specifications which will be required by SPS.



## **Article I. GENERAL USE AGREEMENT (Continued).**

**Section 1.6. Removal.** Licensee may at any time remove Licensee's Equipment from SPS Poles after ten (10) days written notice to SPS in the form of Exhibit D. Such removal shall terminate Licensee's right to use any SPS Poles from which Licensee's Equipment is removed.

**Section 1.7. Permits, Easement and Licenses.** It shall be Licensee's sole responsibility to obtain all permits, easements and licenses necessary for the lawful exercise of the rights granted Licensee by this Agreement.

**Section 1.8. Taxes and Fees.** Licensee shall report, pay and discharge when due all license and permit fees, assessments, sales, use, property and gross receipts taxes arising out of the use by Licensee of SPS Poles or the exercise by Licensee of its rights granted by this Agreement, and all other taxes, fees and governmental charges similar or dissimilar to the foregoing (excluding those federal income taxes attributable to the receipt of rental by SPS), together with any penalties or interest thereon, imposed by any state, federal or local government or any agency or department thereof, upon the Equipment, the use of the Equipment or the payment to SPS of rental for the right to place the Equipment on SPS Poles.

## **Article II. INSURANCE, INDEMNITY AND LIABILITY.**

**Section 2.1. Insurance.** During the Term, Licensee shall maintain comprehensive general liability insurance with limits of \$100,000.00 each person, and \$300,000.00 each occurrence. This comprehensive general insurance coverage shall include coverage for any liability assumed by Licensee under the provisions of Section 2.2. Written evidence of compliance with the requirements of this Section 2.1 shall be furnished to SPS on Execution Date and prior to the expiration of each insurance policy year after Execution Date.

**Section 2.2. Indemnity.** Licensee shall indemnify and hold harmless SPS against and from all claims, demands, causes of action, damages, costs or liability at law or in equity, of every kind and nature whatsoever, directly or indirectly caused by:

(a) the construction, erection, placement, operation, maintenance, replacement, removal or use of Licensee's Equipment on SPS Poles, or

(b) any occurrence occasioned, or claimed to have been occasioned, by any action of SPS causing any interruption, discontinuance or interference with Licensee's service to any of its subscribers or interference with Licensee's Equipment. Licensee shall pay any judgment or decree which may be rendered against SPS, its successors or assigns, in any such suit, action or other legal proceeding and shall reimburse SPS for all legal expense incurred in connection with these legal proceedings.

**Section 2.3. Liability Continues.** Termination of this Agreement, in whole or in part, shall not release Licensee from liability under this Agreement, which arises out of any claim that may be accruing or may have accrued at the time of termination or partial termination of this Agreement.

## **Article III. RIGHTS OF SPS.**

**Section 3.1. Removal or Rearrangement.** SPS may require Licensee, upon thirty (30) days notice to Licensee, to remove or rearrange Licensee's Equipment on SPS Poles at Licensee's expense if, in SPS's judgment, the Equipment interferes with SPS operations or SPS's use of SPS Poles or SPS equipment.

**Section 3.2. Reservation of Right.** SPS reserves the right to maintain SPS Poles and operate its facilities in a manner that will best enable it to fulfill its own service requirements. If SPS determines that a particular pole or poles are no longer necessary for service to SPS customers, upon thirty (30) days notice to Licensee, SPS may remove that pole or poles without